

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

BIG LOTS, INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 24-11967 (JKS)

(Jointly Administered)

Re: D.I. 683

**LIMITED OBJECTION OF SIEMENS INDUSTRY, INC. TO NOTICE
OF PROPOSED ASSUMPTION AND ASSIGNMENT OF EXECUTORY
CONTRACTS OR UNEXPIRED LEASES AND CURE AMOUNTS**

Siemens Industry, Inc. ("Siemens"), by its undersigned counsel, hereby objects on a limited basis ("Objection") to the Notice of Proposed Assumption and Assignment of Executory Contracts or Unexpired Leases and Cure Amounts [Docket No. 683] ("Notice")², as follows:

Background

1. On September 9, 2024 (the "Petition Date"), the above captioned debtors (each a "Debtor," and collectively, the "Debtors") commenced the above-referenced jointly administered bankruptcy cases (the "Cases") under Chapter 11 of the Bankruptcy Code. The general circumstances and events leading to the commencement of the Debtors' Cases are described in the Declaration of Jonathan Ramsden as Chief Financial and Administrative officers of the Debtors in support of the Debtors' Chapter 11 Proceedings and First Day Pleadings [Docket No. 3] (the "Ramsden Declaration"), also filed on the Petition Date.

¹ The debtors and debtors in possession in these chapter 11 cases, along with the last four digits of their respective employer identification numbers, are as follows: Great Basin, LLC (6158); Big Lots, Inc. (9097); Big Lots management, LLC (7948); Consolidated Property Holdings, LLC (0984); Broyhill LLC (7868); Big Lots Stores - PNS, LLC (5262); Big Lots Stores, LLC (6811); BLBO Tenant, LLC (0552); Big Lots Stores - CSR, LLC (6182); CSC Distribution LLC (8785); Closeout Distribution, LLC (0309); Durant DC, LLC (2033); AVDC, LLC (3400); GAFDC LLC (8673); PAFDC LLC (2377); WAFDC, LLC (6163); INFDC, LLC (2820); Big Lots eCommerce LLC (9612); and Big Lots F&S, LLC (3277). The address of the debtors' corporate headquarters is 4900 E. Dublin-Granville Road, Columbus, OH 43081.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Notice.

2. On September 23, 2016, an Official Committee of Unsecured Creditors was appointed [Docket No. 248].

3. Siemens is a creditor of the Debtors pursuant to that certain Equipment and Service Purchase Agreement between Siemens and Debtor dated as of November 16, 2006, as amended by the First Amendment dated April 18, 2008, the Second Amendment dated February 13, 2009, the Third Amendment dated August 14, 2009, the Fourth Amendment dated January 15, 2010, the Fifth Amendment dated March 1, 2011, the Sixth Amendment dated April 11, 2011, the Seventh Amendment dated March 15, 2012, the Eighth Amendment dated March 15, 2012, the Ninth Amendment dated March 8, 2013, the Tenth Amendment dated March 12, 2013, the Eleventh Amendment dated April 30, 2014, the Twelfth Amendment dated August 5, 2014, and the Thirteenth Amendment dated February 15, 2016 (collectively, the “Agreement”) pursuant to which Siemens provides Debtor certain energy management equipment, software, systems and services, and is currently owed \$148,148.28 as more specifically set forth on the schedule attached as **Exhibit A** (copies of the referenced invoices are available upon request).

Objections

4. Siemens objects to the Notice on the following grounds:

A. The Agreement cannot be assumed without concurrent cure of all arrearages under such contract. “Section 365(b) of the executory contracts section of the [Bankruptcy] Code requires a debtor to cure pre-petition defaults as a precondition of assuming an executory contract.” In re Stoltz, 315 F.3d 80, 86 (2nd Cir. 2002). The correct cure amount due to Siemens is \$148,148.28 plus all additional unpaid post-petition amounts that arise prior to the date

of assumption under the Agreement (collectively, the “Cure Amount”), and not \$118,682.77 as set forth in the Notice.

B. Siemens also seeks confirmation that the contract or contracts proposed to be assumed and assigned is the above-referenced Agreement.

5. Any reply to this Objection should be served upon Morris James LLP, 500 Delaware Avenue, Suite 1500, Wilmington, Delaware 19801-1494 Attention: Jeffrey Waxman, Esq. and Phillips Lytle LLP, One Canalside, 125 Main Street, Buffalo, New York 14203, Attn: Angela Z. Miller, Esq.

Reservation of Rights

6. Siemens reserves its right to amend this Objection to include any additional facts as may be determined by its further investigation of the Notice and Agreement. Further, Siemens reserves the right (a) to supplement, or otherwise modify this Objection; or (b) to raise such other and further objections to any proposed assumption and assignment for any other reason, including without limitation the Cure Amount with respect to the proposed assumption and assignment of the Agreement.

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Conclusion

WHEREFORE, Siemens respectfully requests that the Court enter an Order (a) sustaining this Objection in its entirety and overruling the Notice to the extent the relief requested is inconsistent with this Objection, and (b) providing Siemens with such other and further relief as is appropriate.

Dated: November 4, 2024

MORRIS JAMES LLP

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